



CONNECTICUT BAR EXAMINATION
27 July 2006

QUESTION #1

Verdemont, Texahoma and Pacifica are hypothetical states in the United States. Pamela lived in Verdemont. She purchased a used car there and told the car dealer, Donny, that she would soon use it to move to Pacifica, a state on the west coast. He was concerned, however, about that car's ability to make the trip. Donny unsuccessfully tried to sell her a new car, which would have no problem making the trip from Verdemont to Pacifica. Pamela was about half way through her trip, when her car unexpectedly burst into flames in Texahoma. Pamela was injured by the fire. Later that day, Pamela boarded a bus and took it to Pacifica.

She retained a lawyer who filed a monetary damages law suit against Donny, in a federal court in Pacifica. He still lives in Verdemont. Donny answered the complaint. He generally denied liability. His affirmative defense was the statute of limitations.

Assume that the applicable state statute of limitations requires Pamela to file the complaint—and to serve process on Donny—within one year from the date on which this claim arose. Pamela's complaint was filed within twelve months. However, Donny was hard to find. He was not served in Verdemont until fourteen months after the car burst into flames, injuring Pamela. Federal Rule of Civil Procedure 3 provides as follows: "A civil action is commenced by filing a complaint with the court." Pamela's lawyer thus asserts that this law suit is not barred by the statute of limitations.

Donny's lawyer filed a timely motion, requesting the court to dismiss Pamela's complaint for two reasons: lack of personal jurisdiction and failure to comply with the statute of limitations.

Question#1: How should the court rule on each of Donny's claims pursuant to his motion to dismiss? Analyze fully.

Continued on the other side

Assume that the court decided to delay the ruling on each of Donny's claims until trial. The trial was subsequently conducted, based solely on the pleadings submitted by the parties. Prior to jury deliberations, the judge instructed the jury on the following matters—over the objection of Pamela's lawyer: Pamela's contributory negligence for failing to heed Donny's advice to buy a new car for the trip; the statute of limitations defense; and Donny's alleged responsibility for Pamela's injuries.

Question #2: Did the court properly rule on Pamela's objections to the jury instructions? Analyze fully.



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QUESTION #2

Four years ago, First Bank ("Bank") and Debtor Manufacturing Corporation ("Debtor") signed an agreement ("Bank Agreement") providing Debtor with a \$10 million line of credit and providing that Bank would have a security interest in all Debtor's present and after-acquired inventory that would secure all of Debtor's obligations to Bank, including payment obligations arising from any future advances made to Debtor.

One month later, Bank filed an appropriate financing statement in the appropriate filing office.

Debtor borrowed \$1 million from Bank when it signed the Bank Agreement and additional funds thereafter.

Several months ago, Debtor obtained favorable financing terms from one of its inventory suppliers ("Supplier") and purchased \$1 million of goods on credit ("New Goods"). The agreement between Debtor and Supplier ("Supplier Agreement") provided Supplier with a security interest in the New Goods which Supplier was selling to Debtor as well as all other inventory goods that Debtor presently owned or might acquire in the future ("Other Goods").

Thirty days after the signing of the Supplier Agreement, the New Goods were delivered to Debtor. The following week, one of Debtor's other creditors ("Other Creditor") obtained a judgment against Debtor for \$500,000 and caused the sheriff to execute on all Debtor's inventory. Three days after the execution, Supplier filed an appropriate financing statement in the appropriate filing office.

It is now one month later. At this time, Debtor's inventory consists of the New Goods and the Other Goods. Fully analyze the priorities among First Bank, Supplier, and Other Creditor in the New Goods and the Other Goods comprising Debtor's inventory.



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QUESTION #3

Betty, a general contractor, is bidding on a job for a municipality and solicits bids from Bob and Carl for electrical work. Obtaining a \$28,000 bid from Carl, and a \$25,000 bid from Bob, Betty uses Bob's bid in her calculation for the municipality. Minutes after Betty is awarded the job by the municipality, she calls Bob to say she accepts his bid. However, before Betty can speak, Bob blurts out that he has made an error in his bid, having inadvertently used the numbers from another job when initially responding to her. Bob says he cannot do the job for less than \$35,000. Betty refuses to release Bob from his bid and he refuses to perform.

Betty decides she needs to hire more staff since she is so busy. She calls Justin and offers him a job as her assistant for two years, at \$40,000/ year. He immediately accepts, and shortly after he starts working, Betty asks him to sign a covenant not to compete, which begins with the following provision: "I agree not to engage in general contracting within the United States of America for a period of one year from the date of my termination." Justin signs the covenant, however, in six months time Justin leaves Betty's employ and immediately sets himself up as a general contractor in the next town, taking several of Betty's clients with him.

Betty wants to sue both Bob and Justin for breach of contract. Identify and explain the defenses that she should anticipate to these causes of action. Also, identify and explain any rebuttals to these defenses that she might put forward. Analyze fully.



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QUESTION #4

Jen and Ron want to open a call-in pizza delivery service. On October 1, 2005, they duly formed Jenron, a general partnership, to operate the business. Jen contributed \$20,000; Ron contributed \$10,000. They agreed that Jen would not be liable for any of Jenron's losses.

On October 12, 2005, Jen bought a delivery van with \$15,000 of Jenron's cash. Jen assigns her interest in the truck and her interest in Jenron to Citibank, from whom Jen borrowed money for her personal use.

On October 23, 2005, Ron contracted to buy flour for Jenron from Pillsbury on credit without Jen's knowledge or consent. Jenron made timely payments to Pillsbury until April 2006, when Jenron was hit by rising energy costs and a drop in orders. Jenron has made no payment since then.

To get more capital, Jen and Ron admitted Adam as a partner on May 1, 2006.

On May 15, 2006, a Jenron employee driving the van hit a pedestrian while returning to Jenron's office after completing his deliveries for the night. The pedestrian was seriously injured.

- A. What are Citibank's rights in the delivery van and the partnership as a result of Jen's assignment? Analyze fully.
- B. Is Jenron, Jen, Ron, or Adam liable to Pillsbury or the pedestrian? Please explain why each party is or is not liable to the plaintiffs. Analyze fully



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QUESTION #5

Allison Amos was finally able to realize her dream of opening up her own bagel bakery in the town where she grew up. After Allison leased appropriate store space in the business district of town, she hired Bernie Boxennan to repaint the space for \$5,000. When Bernie had finished his work and asked Allison for payment, Allison pointed out that he had missed several spots in the repainting and had done an overall sloppy job. Bernie disagreed with Allison about her assessment of the work, but the most Allison was willing to pay Bernie at this point was a \$4,000 negotiable note, payment due in three months, on which Allison was the maker. Allison had conspicuously indicated on the front of the note that payment of this note by the maker would be "in full satisfaction of any claims that the payee has against the maker."

When Bernie examined the note that Allison offered him, he was upset with the accord and satisfaction language but was nevertheless unwilling to hire a lawyer to try to insist on the originally agreed-to payment. So Bernie took the note from Allison and shortly thereafter sold the note, with his indorsement on the back, for \$3,700 to Cathy Cosby, a good faith purchaser for value. Cathy, in turn, sold the note for \$3,800 to Dennis Dickerson, another good faith purchaser for value. Cathy also indorsed the note on the back. Meanwhile, things were not going well at Allison's bagel shop. It turned out that Bernie not only missed some spots with his paint job, but he had also created some unwanted spots as well. There were paint spills on the floor that Allison had not originally noticed. After spending hours scraping the dried paint off the floor, Allison vowed she was not going to pay a penny on the \$4,000 note that she had given to Bernie. For his part, Bernie had since concluded that he had under-bid Allison's job and that his painting labors for her were actually worth \$10,000, even with the missed spots she had pointed out.

Fully analyze the nature and extent of Dennis's rights against Allison, Bernie and Cathy when the note comes due. Further, assuming that Bernie ends up having to pay Dennis, fully analyze Bernie's rights against Allison at that point.



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QUESTION #6

Granfalloon and Atlantica are hypothetical states in the United States. The defendant is being prosecuted in United States District Court of Granfalloon on an indictment of one count of Failure to Pay Child Support obligation in violation of 18 U. S. C. § 228, the Child Support Recovery Act of 1992 ("CSRA"). Section 228 criminalizes the willful failure to pay child support obligations that are either one year overdue or are greater than \$5,000 when the parent and child are residents of different states.

The complaint alleges that the Granfalloon state trial court, by an order dated October 7, 1989, ordered Defendant to pay \$752.00 per month in child support to his ex-wife for the benefit of their children. The complaint further alleges that Defendant lives in Atlantica, his children live in Granfalloon, and that he is approximately \$39,850.00 in arrears on his child support payments. The complaint also alleges that Defendant was ordered to appear before the Granfalloon trial court on April 28, 1994, and Defendant failed to appear. As a result, that court entered judgment against defendant for child support arrearage in the amount of \$37,600.00.

The defendant has moved to dismiss the indictment on the basis that Congress exceeded its powers in enacting CSRA. What are the best arguments for and against the defendant's motion? How should the Court rule? Analyze fully.



CONNECTICUT BAR EXAMINATION 27 July 2006 **QUESTION #7**

Aspen and Gray are hypothetical states in the United States. Fun Park is a large amusement park incorporated and operated in the State of Aspen. Xenona lives in the distant State of Gray. While at Fun Park during an Aspen vacation, Xenona is thrown from her seat in an amusement park ride and is seriously injured. Fun Park conceded that her injuries occurred through its negligence, and settled all of Xenona's claims against it.

Yolanda, Xenona's daughter, has now filed suit against Fun Park on the ground that Xenona's injuries from the accident have caused Yolanda to lose parental consortium. Yolanda is also a citizen of Gray.

Aspen law does not recognize recovery for loss of parental consortium. A recent Aspen Supreme Court case stated in rejecting the cause of action: "There must be an end to financial responsibility for negligence. Otherwise, our economy may suffer."

Gray is the only state to recognize a cause of action for loss of parental consortium. A recent Gray Supreme Court case upholding liability stated: "We regard compensation for loss of parental consortium (for the loss of the affection and society of one's parent) to be essential to the well-being of families and the maintenance of strong family ties."

Fun Park carries liability insurance for accidents at the park. However, the policy does not cover liability based on loss of parental consortium.

The question is in two parts. Regarding each, you are to assume that Fun Park does not question the court's personal jurisdiction. You are further to assume that Yolanda's injury occurred in Aspen.

Part One

Yolanda's suit is in Gray state court. The court uses as its choice-of-law approach the original Restatement. What result? Analyze fully.

Part Two

Yolanda's suit is in Aspen state court. The court uses as its choice-of-law approach the Restatement (Second). What result? Analyze fully.



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QUESTION #8

Verdemont and Texahoma are hypothetical states in the United States. Custom Cook, Inc., was a Verdemont manufacturer of custom-made industrial ovens. Texahoma-based Sweet Things, Inc., was one of the largest candy manufacturers in North America. Sarah Jenson, President of Custom Cook, made a contract to specially manufacture and sell to Sweet Things a gigantic candy oven for use at the Sweet Things factory. The contract was signed by both sides on March 1, and delivery date was to be September 1 of that same year, "FOB Buyer's Place of Business." The total cost of the contract for Sweet Things was \$60,000. Delivery costs from Verdemont to Texahoma were expected to be \$3,000. Sarah Jenson estimated that the total cost of parts for the oven would be \$35,000, and projected total labor costs (excluding delivery of the finished product) would be \$15,000.

On June 1 of that year, Sweet Things contacted Custom Cook to repudiate the contract. At the point of repudiation, the specially manufactured oven for Sweet Things was a work-in-progress. At that point, Custom Cook had incurred \$9,000 in labor cost and had expended \$25,000 for parts. The unfinished oven could be sold for scrap on June 1 for \$5,000 (with the buyer of the scrap picking it up at the buyer's own expense). Because this was such a specialized oven, the market for it as a finished product was very small. After diligent efforts at checking industry sources, Sarah came to the following conclusion: If the oven were completed, there would be a 50 percent chance that in finished form it would sell for \$46,000 (with the buyer of the finished product picking it up at the buyer's own expense), and a 50 percent chance that it would be worthless (even as scrap) in finished form.

1) Assuming that Sarah's projections are accurate, fully analyze whether Custom Cook should cease manufacture now and sell the unfinished oven for scrap, or whether it should complete manufacture and attempt to sell the finished product.

2) Then, assuming that Sweet Things has paid none of the purchase price, fully analyze the nature and extent of Custom Cook's damage claim against Sweet Things under three different scenarios:

- a) If it ceased manufacture now and sold the unfinished oven for \$5,000;
- b) If it completed manufacture of the oven and was able to sell it for \$46,000; and
- c) If it completed manufacture of the oven and was unable to sell it despite its best resale efforts at that point.



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QUESTION #9

Atlantica and Pacifica are hypothetical states in the United States. An informant, Ivy, tells her police handler (Officer Smith) that she bought drugs from Dan in Dan's home in Atlantica on July 1, 2003. Two months before Dan was charged with selling drugs to Ivy, he fled to Pacifica. When arrested on Atlantica's warrant, the Pacifica police found Dan living under an assumed name.

At his trial Dan stipulates that he knew the substance he sold to Ivy was an illegal drug and that he intended to make the sale. Thus, Dan believes his criminal intent – an element the prosecution must otherwise prove – is no longer an issue in the case.

Dan does have a defense, however. He claims he was entrapped by Ivy to make the sale. Assume that under Atlantica law the defense of entrapment is a question for the jury. It must decide whether Dan was pre-disposed to commit the crime. The focus, then, is upon the defendant's state of mind before he committed the crime. To prove he was not disposed, Dan will testify, in his defense, that except for the sale to Ivy he never sold drugs, and he sold to Ivy only after Ivy had beseeched him on no fewer than ten occasions to find drugs for her.

1. Ivy testifies for the prosecution. Anticipating the defense, the prosecutor asks Ivy whether she asked Dan to sell her drugs anytime before the occurrence of the sale being litigated. Ivy hotly denies the claim.

Here is one exchange between Dan's lawyer and Ivy during Ivy's cross-examination. "You committed many drug crimes in the month before and the months after July 1, 2003?" "I did not." "Officer Smith knew of these crimes you committed." "He didn't because I didn't commit them." "You were never arrested or prosecuted for those drugs crimes?" "No, because I didn't commit them."

After the prosecution rests, Dan's lawyer seeks to introduce evidence to prove that Ivy committed the drug crimes, and that while Smith knew of these crimes he chose not to arrest or prosecute Ivy.

Continued on the other side

Concluding her reason(s) for objecting to the admission of this evidence, the prosecutor notes that her office had never considered whether to bring drug charges against Ivy covering her conduct during the period mentioned by Dan's lawyer. As judge, how do you rule? Analyze fully.

2. Testifying, Dan explains why he sold the drugs to Ivy (as above).

While cross-examining Dan, the prosecutor wants to ask him whether after July 1, 2003, he fled to Pacifica and lived under an assumed name. Dan objects. As judge, how do you rule? Analyze fully.



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QUESTION #10

Your client is Bank Two, a local institution with a trust department. The bank has been named as the executor of Jamal Wilson's estate. The dispositive provisions of Jamal's valid will read as follows:

"I give all of my property as follows:

"1. the house I am living in at my death to my son, Sam, to use for his lifetime, and at his death to my heirs..

"2. my coin collection to my friend Travis Landry;

"3. \$12,000 to the heirs of my friend Marilyn Montesque; and

"4. the rest of my estate to Local Hospital to support its mobile service to poor neighborhoods."

Jamal was a widower, and Sam was his only child. His assets at death included his home on Maple Street, two bank accounts, and household furnishings. He had no debts. You learn that for his last year, Jamal had been unable to handle his financial affairs, so Sam had acted on his behalf under a valid Durable Power of Attorney. Six months before Jamal's death and without talking to his father, Sam sold the coin collection to raise funds for Jamal's care because a Certificate of Deposit had not yet matured. Further inquiry reveals that Marilyn died intestate last year leaving one niece (the daughter of her sister) and two nephews (sons of her brother) as her heirs. They are still alive. The strapped-for-funds, non-profit Local Hospital discontinued its mobile service last year.

Advise the bank on how to distribute Jamal's estate. Analyze fully.



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QUESTION #11

Recently, Lawyer Andy was hired by the AB&C law firm. Andy came to AB&C after having worked for three years at the DE&F law firm. While at DE&F, Andy worked under Stan, a partner at DE&F. Andy and Stan handled a personal injury case in which Peter, DE&F's client, sued Vader, AB&C's client. Stan was the partner in charge of Peter's case, and directed how the case was to be handled. For instance, Stan made Andy responsible for investigating the facts of Peter's case, and instructed Andy to call several safety managers who were employed by Vader, which Andy did. Tiring of the work at DE&F, Andy left the firm despite a non-compete agreement he had signed when coming to the firm three years previously.

When Andy arrived at AB&C, he was immediately screened from the Peter v. Vader matter by AB&C Senior Partner, Ann. Andy was assigned several other matters, however, one of which was to draft a simple will for Client Corrine. Andy undertook this task and when Corrine was unsure whom to name as her executor, Andy suggested himself. Another assignment given to Andy was a criminal matter, where Client Mike was accused of breaking and entering. Regarding Mike, Andy was uncomfortable since Mike continually changed his story about what happened on the night in question, leaving Andy unsure about which of Mike's stories to believe. Mike wanted to testify at trial, however, Andy refused to call him to testify.

In light of the above noted circumstances, analyze fully whether anything has happened for which professional discipline could be imposed?



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QUESTION #12

Vinnie Victim was shopping at the Mart-Mart, a large discount store. As she walked down the aisle with shampoo and other hair products, looking for her favorite brand in the mid-size (kept on an upper shelf), she slipped and fell. She broke her leg and suffered a head injury. The cause for her slip was a pool of shampoo on the floor. The pool had not been there very long (so there is no issue of a failure to inspect floors), and there was no broken, leaking or partially emptied bottle on the shelf near the accident or on the floor.

The ambulance taking Vinnie to the hospital was involved in a motor vehicle accident that resulted in further injury to Vinnie's leg and made her head injury more serious because of the delay in treatment. Under a recently adopted law, the ambulance operator and its employees are immune from tort liability.

Vinnie has sued Mart-Mart for all her personal injuries. Mart-Mart has denied liability for any of her injuries. It has suggested that a child may have played with one of the shampoo bottles on the lowest shelf, opened it and allowed some of it to spill on the floor. The store's surveillance cameras show that a large number of young children were in the store at the time of the accident.

Mart-Mart admits that its staff restock its shelves on a regular schedule and the shampoo shelves should have been restocked about 10 to 15 minutes prior to the accident. A stocker brings a hand truck with the materials and places products on the shelf. There can be broken or leaking bottles that the stocker is to avoid putting on the shelf and is supposed to place in a tub on the hand cart. Actual observation shows that stockers often put broken or leaking bottles on the floor and do not always wipe up the floor when they take the broken bottles away.

What legal-factual problems must Vinnie overcome to prevail in her suit against Mart-Mart? Evaluate her chances of succeeding. Analyze fully.